

RECEIVED
FEDERAL ELECTION
COMMISSION

2015 JUL 22 PM 12:45

CELA

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6902
DATE COMPLAINT FILED: November 4, 2014
DATE OF NOTIFICATION: November 11, 2014
LAST RESPONSE RECEIVED: January 27, 2015
DATE ACTIVATED: March 24, 2015

ELECTION CYCLE: 2014
EXPIRATION OF SOL:
October 29, 2019 (earliest)
October 30, 2019 (latest)

COMPLAINANT: Molly Cronin, Chair, McFadden for Senate

RESPONDENTS: Al Franken for Senate 2014 and Thomas H. Borman,
in his official capacity as treasurer
Al Franken
Independence USA PAC and Diane Gubelli in
her official capacity as treasurer

**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. § 30104(b)¹
52 U.S.C. § 30116(a), (f)
52 U.S.C. § 30118(a)
11 C.F.R. § 109.21
11 C.F.R. § 109.23

INTERNAL REPORTS CHECKED: FEC Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter concerns allegations that Independence USA PAC and Diane Gubelli in her official capacity as treasurer ("IUSA PAC") made an in-kind contribution to Al Franken for Senate 2014 and Thomas H. Borman in his official capacity as treasurer (the "Committee"), the

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

1 principal campaign committee of Al Franken. Specifically, the Complaint alleges that IUSA
2 PAC financed the dissemination and distribution of an advertisement promoting Franken that
3 republished video footage from a Committee ad entitled "Delivered," and in doing so, made a
4 prohibited and excessive in-kind contribution to the Committee. In addition, the Complaint
5 alleges that IUSA PAC coordinated its expenditure for its ad with the Committee because the
6 two ads have similar images and messages and because both ads began airing on the same day,
7 October 30, 2014. The Committee and IUSA PAC deny the republication and coordination
8 allegations.

9 The available information demonstrates that IUSA PAC aired an advertisement that used
10 video footage created by the Committee, and its use of those materials, even "in part," constitutes
11 an in-kind contribution to the Committee. Accordingly, we recommend that the Commission
12 find reason to believe that IUSA PAC violated 52 U.S.C. §§ 30116(a), 30118(a), and 30104(b)
13 by making excessive and prohibited in-kind contributions to the Committee and by failing to
14 disclose the expenditures as a contribution to the Committee. Since neither the Complaint nor
15 the Responses included a full copy of the IUSA PAC ad, and we could not find this ad using
16 public sources, we recommend that the Commission engage in an investigation to obtain the ad,
17 complete the factual record, and assess the Respondents' defenses. Consequently, we further
18 recommend that the Commission take no action at this time against Al Franken and the
19 Committee, and IUSA PAC with respect to the coordination allegation until the Commission
20 obtains IUSA PAC's advertisement.

1 **II. FACTS**

2 IUSA PAC is an independent expenditure-only political committee ("IEOPC") registered
3 with the Commission.² As an IEOPC, IUSA PAC may solicit and accept contributions from
4 corporations, individuals, and other federal political committees in excess of the Act's limits.³
5 Al Franken was a candidate in the 2014 U.S. Senate election in Minnesota, and Al Franken for
6 Senate 2014 was his principal campaign committee.⁴

7 During the 2014 election cycle, the Committee placed its campaign advertisements on its
8 YouTube channel and also made stock or "B-roll" video footage of Franken available on its
9 campaign website, www.alfranken.com. The advertisements available on the YouTube channel
10 include: "Try," an ad published on August 27, 2014, which showed images of Franken standing
11 next to a worker in a factory; "Gridlock," an ad published on September 24, 2014, which
12 featured images of Franken talking with a farmer at a field and speaking with a group of people;
13 and "Delivered," an ad published on October 30, 2014, which included the images in the "Try"
14 and "Gridlock" ads just described.

15 On October 31, 2014, IUSA PAC disclosed making a \$512,850.65 independent
16 expenditure to consulting firm SKDKnickerbocker ("SKD") for "TV Ad Buy and Production,"

² See Form 1, Statement of Organization (Oct. 18, 2012). According to the cover letter signed by treasurer Gubelli, IUSA PAC intended to raise funds in unlimited amounts, but would not use those funds to make contributions to federal candidates or committees, whether direct, in-kind, or via coordinated communications. See Letter from Diane Gubelli, Treasurer, IUSA PAC (Oct. 18, 2012).

³ See Advisory Op. 2010-11 (Commonsense Ten).

⁴ On July 15, 2009, Franken filed a Statement of Candidacy and subsequently his primary campaign committee filed a Statement of Organization with the Commission. See Form 2, Statement of Candidacy (July 15, 2009); Form 1, Statement of Organization (Apr. 5, 2010). Senator Al Franken was re-elected for a second term in the U.S. Senate on November 4, 2014.

1 disseminated on October 30, 2014, in support of Al Franken.⁵ The Complaint notes that both the
2 Committee and IUSA PAC disseminated similar television ads on that day. The Complaint
3 asserts that the IUSA PAC ad and the Committee's "Delivered" ad are "remarkably similar" as
4 they "contain the exact same footage and the exact same messaging."⁶ It points to six similar
5 features in the ads: (1) statements that Franken has worked "across party lines;" (2) statements
6 that Franken has "kept his head down and delivered" on policies that benefit Minnesota;
7 (3) statements that Franken has worked on passing a farm bill; (4) similar images of Franken
8 talking with a farmer at a field; (5) nearly identical images of Franken standing next to a worker
9 at a factory; and (6) nearly identical images of Franken speaking with a group of people.⁷

10 The Complaint includes side-by-side comparisons of screenshots from the Franken and
11 IUSA PAC ads.⁸ The three images Complainant alleges came from the "Delivered" ad appear
12 for approximately seven seconds in that 30-second ad.⁹ We do not know how long these similar
13 images appeared in the IUSA PAC ad.¹⁰

⁵ Schedule E, 24/48 Hour Report of Independent Expenditures (Oct. 31, 2014), *available at* <http://docquery.fec.gov/pdf/226/14952562226/14952562226.pdf#navpanes=0>.

⁶ Compl. at 1 (Nov. 4, 2014).

⁷ *Id.* at 2-3.

⁸ *Id.*

⁹ See Al Franken for Senate 2014, YOUTUBE, <https://www.youtube.com/user/FrankenForSenate>. These images appear from the :01 mark to the :03 mark (Franken talking with a farmer at a field), the :10 mark to the :12 mark (Franken speaking with a group of people), and the :15 mark to the :17 mark (Franken with a factory worker) of the "Delivered" ad. The Committee's 30-Day Post-General Report does not specifically identify the date and amount of the "Delivered" ad. Instead, it discloses six media buy and media production disbursements to Shorr Johnson Magnus totaling \$1,611,785.63 that were made between October 16 and October 29, 2014; it appears likely that the "Delivered" costs reflect a portion of these disbursements. See 2014 30-Day Post-General Report at 4483-84 (Dec. 4, 2014), *available at* <http://docquery.fec.gov/pdf/001/14021390001/14021390001.pdf>.

¹⁰ As previously noted, neither the Complaint nor the Responses attach an electronic copy or link to the IUSA PAC ad, and we could not locate it on the public record. While the Complaint cites YouTube.com as the source that displayed the IUSA PAC ad, the site does not currently include any IUSA PAC ad relating to Franken. It is not clear when the material was removed.

1 **III. ANALYSIS**

2 **A. There is Reason to Believe that IUSA PAC Republished Candidate**
3 **Campaign Materials**
4

5 Under the Act, "the financing by any person of the dissemination, distribution, or
6 republication, in whole or in part, of any broadcast or any written, graphic, or other form of
7 campaign materials prepared by the candidate, his campaign committees, or their authorized
8 agents shall be considered to be an expenditure."¹¹ The republication of campaign materials
9 prepared by a candidate's authorized committee is also "considered a[n in-kind] contribution for
10 the purposes of contribution limitations and reporting responsibilities of the person making the
11 expenditure,"¹² because the person financing the communication "has provided something of
12 value to the candidate [or] authorized committee."¹³

13 The Commission created an exemption for grassroots activity on the internet that allows
14 individuals to republish campaign materials available on the internet without making
15 a contribution or expenditure.¹⁴ The exception, however, does not exempt from the definition of
16 contribution" any "public communication" that involves the republication of such materials.¹⁵

¹¹ 52 U.S.C. § 30116(a)(7)(B)(iii).

¹² 11 C.F.R. § 109.23(a).

¹³ See Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 442 (Jan. 3, 2003) (explanation and justification) ("Coordinated and Independent Expenditures E&J"). As the Commission there explained, "Congress has addressed republication of campaign material through [52 U.S.C. § 30116(a)(7)(B)(iii)] in a context where the candidate/author generally views the republication of his or her campaign materials, *even in part*, as a benefit" and "can be reasonably construed only as for the purpose of influencing an election." *Id.* at 443 (emphasis added); see also Coordinated Communications, 71 Fed. Reg. 33,190, 33,191 (Jun. 8, 2006) (explanation and justification), ("Coordination E&J") (communications "that disseminate, distribute, or republish campaign materials, no matter when such communications are made, can be reasonably construed only as for the purpose of influencing an election.").

¹⁴ See 11 C.F.R. §§ 100.94, 100.155 (uncompensated internet activity does not result in a contribution or expenditure); Internet Communications, 71 Fed. Reg. 18,589, 18,604 (Apr. 12, 2006) (explanation and justification).

¹⁵ A "public communication" is defined as a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank, or any other form of general political advertising. 11 C.F.R. § 100.26.

1 For example, a contribution would result “if an individual downloaded a campaign poster from
2 the Internet and then paid to have the poster appear as an advertisement in the New York
3 Times.”¹⁶

4 IUSA PAC apparently republished campaign materials produced by the Committee when
5 it aired its ad supporting Franken. While this ad is not publicly available, IUSA PAC
6 acknowledges that it “used a few snippets of video that also appear in the Franken Committee
7 ad” in creating its own ad.¹⁷ And, indeed, the three screenshots of Franken in the IUSA PAC ad
8 identified in the Complaint appear to be images contained in the Franken Committee’s “Try,”
9 “Gridlock,” or “Delivered” ads.¹⁸ By republishing this footage, IUSA PAC made an in-kind
10 contribution to the Committee.¹⁹

11 IUSA PAC nevertheless contends that its use of the Committee’s footage does not
12 constitute republication, noting that all of this footage was obtained from YouTube and not
13 directly from the Committee or from the Committee’s website.²⁰ Respondents argue that “no
14 violation should be found under 11 C.F.R. § 109.23 where, as here, the footage was obtained
15 without direct contact with the campaign, where the third party’s advertisement does not repeat
16 the entirety, or even a substantial portion, of the campaign ad, and where the third party adds its
17 own text, graphics, audio, and narration.”²¹ IUSA PAC also describes the Committee video
18 footage as “an insubstantial part of the total video footage used in the IUSA PAC ad” and

¹⁶ See 71 Fed. Reg. at 18,604.

¹⁷ IUSA PAC Resp. at 3.

¹⁸ See Al Franken for Senate 2014, YOUTUBE, <https://www.youtube.com/user/FrankenForSenate>.

¹⁹ See 11 C.F.R. § 109.23(a).

²⁰ IUSA PAC Resp. at 3-4.

²¹ *Id.* at 4 (citing Statement of Reasons, Comm’rs Hunter, McGahn and Petersen at 4, MUR 6357 (American Crossroads)).

1 believes that the Committee footage is indistinguishable from “the use of brief quotes of a
2 candidate on a particular issue, which is not considered republication under [11 C.F.R. §]
3 109.23.”²²

4 As to the assertion that the materials were obtained from public sources, that argument
5 misses the mark because the republication regulation focuses on the further dissemination of
6 campaign materials, wherever obtained.²³ Moreover, in its 2003 rulemaking, the Commission
7 specifically rejected a request to adopt a “public domain” exception to republication, explaining
8 that “virtually all campaign material that could be republished” may be considered in the public
9 domain, and therefore such an exception could “swallow the rule.”²⁴

10 IUSA PAC’s argument that its use of “a few snippets of video” from the Committee does
11 not constitute republication of Franken’s campaign materials is unpersuasive at this stage. IUSA
12 PAC has not supplied the information needed to support this defense — namely, the ad itself —
13 which appears to have been available on a public website at one point,²⁵ but has since been
14 removed. Without a copy of the video, we cannot assess the validity of IUSA PAC’s assertion
15 that its admitted redistribution of the campaign materials was insubstantial or otherwise
16 immaterial.

17 Similarly, the Commission cannot properly assess IUSA PAC’s representation that —
18 notwithstanding its admitted use in its ad of materials that were created in the first instance by
19 the Franken Committee — the message of the ad that it distributed “differs markedly” because it

²² *Id.* at 4.

²³ See 52 U.S.C § 30116(a)(7)(b)(iii) (“... dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials. . .”) (emphasis added).

²⁴ Coordination and Independent Expenditures E&J, 68 Fed. Reg. at 442-43.

²⁵ The Complaint cites to a YouTube posting of the ad that it apparently accessed on November 1, 2014. Compl. at 1.

1 featured its own "text, audio, graphics and narration."²⁶ Although the preliminary record here
2 does not include a complete video copy of the IUSA PAC advertisement, IUSA PAC nonetheless
3 admits that at least certain language appeared in both communications. For instance, both ads
4 apparently make express reference to Franken seeking to "work across the aisle" and keeping
5 "his head down." IUSA PAC contends that the repetition of those phrases is "unremarkable"
6 because they were either Franken campaign themes or issues first raised by the media. But even
7 were the Commission to accept as true the assertion that the ads differed in certain respects, that
8 fact alone would not resolve the inquiry. Virtually any subsequent distribution of campaign
9 material by a third party may be said to constitute a person's "own" message; thus, to construe
10 the Act and regulations as reaching only identical or nearly-identical communications would as a
11 practical matter render the concept of republication a nullity. Indeed, the Commission expressly
12 rejected that approach in its rulemaking proceedings on republication, declining to adopt a
13 proposed "fair use" exception that would have permitted republication of "limited portions of
14 campaign materials for analysis and other uses" — specifically because such an approach "*could*

²⁶ IUSA PAC Resp. at 4. Specifically, IUSA PAC represents that its ad discusses Franken's efforts to implement a data privacy law and strengthen Medicare and Social Security, issues the Committee ad does not mention. *Id.* at 2. Further, it claims the Committee's ad highlights Franken's positions on student debt, food and drug standards, workforce training and renewable energy, issues that the IUSA PAC ad does not mention. *Id.* As for the issues that both ads address, IUSA PAC maintains that the similarities are unremarkable because the media extensively covered Franken's emphasis on the Farm Bill in his public campaign appearances and debates; Franken's campaign website and other media reports commonly referred to him "working across the aisle;" and the *Minnesota Star Tribune*, the state's largest newspaper, published an editorial six days before the two ads began airing stating that Franken "has kept his head down and delivered" on the newspaper's expectations since he took office in 2009. *Id.* at 3.

1 *swallow the rule.*²⁷ That concern is only amplified here, where the Commission is unable to
2 assess the claimed qualitative differences upon which the Respondent relies in asserting its
3 defense.

4 For the same reason, the Commission is not currently in a position to reach an informed
5 conclusion about IUSA PAC's claim that it satisfies the regulatory exception for briefly quoted
6 materials. The scope and application of that regulatory exception must be construed in a manner
7 consistent with the statute's mandate that circulating a candidate's "written, graphic, or other
8 form of campaign materials" — even "in part" — constitutes a benefit to the campaign and thus
9 an actionable republication of campaign materials.²⁸ Here, it is unclear how much of the
10 Committee's campaign footage IUSA PAC used in its 30-second advertisement; rather, the
11 Commission knows only that at least some of the video footage of Franken — the candidate
12 himself and thus possibly a core component of the presentation — came from the Committee's
13 previously existing campaign materials.

14 In sum, we conclude that the screenshots provided with the Complaint and IUSA PAC's
15 concession that it did in fact use video footage of the Committee in its advertisement reflect that
16 IUSA PAC republished the Committee's campaign materials. On the record available to the
17 Commission at this preliminary stage, that reasonable inference remains un rebutted. Therefore,
18 we recommend that the Commission find reason to believe that Independence USA PAC
19 violated 52 U.S.C. §§ 30116(a), 30118(a), and 30104(b) by making an excessive and prohibited
20 in-kind contribution and by failing to properly disclose the cost of the communication as a

²⁷ Coordination and Independent Expenditures E&J, 68 Fed. Reg. at 443 (emphasis added).

²⁸ 52 U.S.C. § 30116(a)(7)(B)(iii); Coordination and Independent Expenditures E&J, 68 Fed. Reg. at 442-43 (acknowledging that Congress concluded that republication even in part provides a benefit to the candidate).

1 contribution.²⁹ We propose to conduct a targeted investigation to assess the scope of IUSA
2 PAC's use of these materials and therefore further recommend that the Commission approve
3 compulsory process, as necessary.

4 **B. The Commission Should Take No Action at this Time Regarding the**
5 **Coordination Allegation Against the Respondents**
6

7 Under the Act, an expenditure made by any person in cooperation, consultation, or
8 concert with, or at the request or suggestion of, a candidate, his authorized political committees,
9 or their agents, is considered a contribution to such candidate.³⁰ The candidate must report a
10 coordinated contribution as both a contribution received and as an expenditure.³¹ IEOPCs, such
11 as IUSA PAC, are prohibited from making direct or in-kind contributions to federal candidates.³²
12 Federal candidates and their authorized committees may not knowingly accept an excessive or

²⁹ While section 30118(a) does not expressly prohibit a political committee from making a contribution using corporate funds, the provision was originally enacted on the premise that committees could not accept corporate contributions at all. In enforcing the ban on corporate contributions in the context of party committees using non-federal funds for federal activities, the Commission has concluded that a political committee may violate section 30118(a) by spending or disbursing corporate funds. See MUR 3774 (National Republican Senatorial Committee) (finding probable cause to believe that party committee violated former 2 U.S.C. §§ 441b and 441a(f) (now 52 U.S.C. §§ 30118(a) and 30116(f)) and 11 C.F.R. § 102.5(a) by using prohibited and excessive funds for Get Out the Vote activities that benefited federal candidates); Conciliation Agreement ¶ V, MUR 1625 (Passaic County Democratic Party) (state party committee, which used non-federal funds to make coordinated party expenditures, admitted that it violated section 441b(a) (now section 30118) "by using funds prohibited in connection with federal elections"). Moreover, in MUR 4788 (California Democratic Party), the Commission found reason to believe that the California Democratic Party and the Democratic State Central Committee of California violated 2 U.S.C. § 441b (now 52 U.S.C. § 30118) and 11 C.F.R. § 102.5(a)(1)(i) by disbursing non-federal funds for communications expressly advocating the election of a federal candidate that would have either resulted in independent expenditures or in-kind contributions if coordinated with the candidate. The Commission ultimately filed suit against the respondents, obtained summary judgment that the state party committees violated section 441b (now section 30118) and 11 C.F.R. § 102.5 by using non-federal funds to make disbursements for advertisements constituting independent expenditures. See *FEC v. California Democratic Party*, 2004 WL 865833, Civ. No. 03-0547 (E.D. Cal. Feb. 13, 2004).

³⁰ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20.

³¹ 11 C.F.R. §§ 109.20(b) and 109.21(b).

³² 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a); See Advisory Opinion 2010-11 (Commonsense Ten). See also FEC Press Release (Oct. 9, 2014), http://www.fec.gov/press/press2014/news_releases/20141009release.shtml; FEC Agenda Document 14-53-A, Final Rules on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations (Oct. 8, 2014), http://www.fec.gov/agenda/2014/documents/mtgdoc_14-53-a.pdf.

1 prohibited contribution.³³

2 Communications that are paid for by a third party, but coordinated with a candidate, are
3 in-kind contributions to the candidate.³⁴ A communication is coordinated if it: (1) is paid for by
4 a person other than the candidate or candidate's committee; (2) satisfies one or more of the four
5 content standards of 11 C.F.R. § 109.21(c);³⁵ and (3) satisfies one or more of the six
6 conduct standards of 11 C.F.R. § 109.21(d).³⁶

7 The Complaint's coordination allegation focuses exclusively on the conduct standard.³⁷
8 Essentially, it argues that the Committee and IUSA PAC had to engage in coordinated activity
9 with respect to its ads, given that the ads are "remarkably similar" and aired on the same date.³⁸
10 The Complaint asserts that it "strains credulity" to believe otherwise, as IUSA PAC and the
11 Committee selected the same footage and messaging, produced separate ads using the same
12 footage and messaging, and shipped the ads so that they were each disseminated on the same

³³ 52 U.S.C. §§ 30118(a) and 30116(f).

³⁴ 11 C.F.R. § 109.20.

³⁵ The content prong is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication, in relevant part, that refers to a clearly identified House or Senate candidate, and is publicly distributed or disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the candidate's primary election; or (5) a public communication that is the functional equivalent of express advocacy. *Id.* § 109.21(c)(1)-(5).

³⁶ The six types of conduct that satisfy the conduct standard are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee or independent contractor; and (6) republication. *Id.* § 109.21(d).

³⁷ The payment prong of the coordinated communication test is satisfied because IUSA PAC paid for the ad at issue. The content prong is also satisfied because the ad was a public communications that expressly advocated Franken's election. *See* 11 C.F.R. § 109.21(c)(3); *see also* 11 C.F.R. § 100.26.

³⁸ Compl. at 1.

1 day.³⁹

2 Respondents deny that any coordination occurred. The Committee asserts that the
3 Complaint failed to advance a single fact to support the coordination allegation, and the facts the
4 Complaint does raise — IUSA PAC's use of footage publicly available on the Committee's
5 website; the similarity of the ads' themes; and the dissemination of the ads on the same day —
6 are insufficient to establish coordination by themselves.⁴⁰ IUSA PAC's Response and the
7 attached affidavit from its political consultant Howard Wolfson, a principal of Gotham Acme
8 LLC, also argue that the ad fails to meet any of the conduct standards.⁴¹ Specifically, Wolfson
9 declares that neither Senator Franken nor any representative of the Committee was present at any
10 meeting that he had with SKD, the firm that IUSA PAC retained to produce and buy media time
11 for the ad at issue.⁴² Wolfson also avers that IUSA PAC did not create, produce, or distribute the
12 ad at the request or suggestion of Franken, the Committee, or any agent, and denies that Franken,
13 the Committee, or any agent, was materially involved in or participated in one or more
14 substantial discussions about the ad at issue.⁴³ IUSA PAC also asserts that the Commission
15 should not infer coordination merely because IUSA PAC and the Committee began airing the ads
16 on the same day since this was a "critical final stretch" of the campaign when campaigns and
17 third-party groups commonly seek to reach voters.⁴⁴

³⁹ *Id.* at 3.

⁴⁰ Committee Resp. at 4.

⁴¹ IUSA PAC Resp. at 5 (Jan. 27, 2015); Aff. of Howard Wolfson ¶ 2-7 (Jan. 26, 2015) ("Wolfson Aff.").

⁴² Wolfson Aff. ¶ 3.

⁴³ *Id.* ¶ 6-7.

⁴⁴ IUSA PAC Resp. at 5.

1 As noted above, IUSA PAC also asserts that the ads are distinguishable, while the
2 Committee asserts that its "Delivered" ad relied on earlier Franken campaign footage, thus
3 suggesting that IUSA PAC had ample time to incorporate the images into its ad.⁴⁵ The available
4 information corroborates this view, as the images in the "Delivered" ad that allegedly were
5 similar to the IUSA PAC ad were taken from Committee ads that disseminated as early as
6 August 27, 2014.

7 While the Respondents present some reasons to recommend that the Commission find no
8 reason to believe that coordination occurred between the Committee and IUSA PAC, given our
9 intent to obtain IUSA PAC's ad to determine the scope of the apparent republication violation,
10 we recommend that the Commission take no action at this time with respect to Al Franken, the
11 Committee, and IUSA PAC with respect to the allegation that it engaged in coordinated activity
12 with the Committee creating a prohibited in-kind contribution.

13 **IV. PROPOSED INVESTIGATION**


14 We propose to conduct a targeted investigation to obtain the IUSA PAC ad in question
15 and any Committee footage that IUSA PAC used to create it. From there, we will be able to
16 determine the extent of IUSA PAC's republication of the Committee's materials, which will
17 allow us to assess the Respondent's claims concerning its use of the footage and to recommend
18 an appropriate remedy for the apparent violation. More information regarding the ad will also
19 help us make an appropriate recommendation regarding the coordination allegation. We would
20 seek to obtain the information informally, but we recommend that the Commission authorize the
21 use of compulsory process in this matter, as necessary.

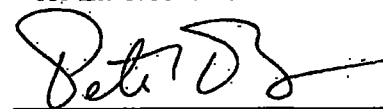
⁴⁵ See Committee Resp. at 3.

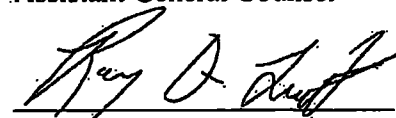
V. RECOMMENDATIONS

1. Find reason to believe that Independence USA PAC and Diane Gubelli in her official capacity as treasurer violated 52 U.S.C. §§ 30116(a), 30118(a), and 30104(b).
2. Take no action at this time with respect to the allegation that Independence USA PAC and Diane Gubelli in her official capacity as treasurer, engaged in coordinated activity creating a prohibited in-kind contribution.
3. Take no action at this time with respect to Al Franken, Al Franken for Senate 2014, and Thomas H. Borman, in his official capacity as treasurer.
4. Approve the attached Factual and Legal Analysis.
5. Authorize the use of compulsory process in this matter, including the issuance of appropriate interrogatories and document subpoenas, and depositions, as necessary.
6. Approve the appropriate letter.

7.22.15
Date


Stephen Gura
Deputy Associate General Counsel
for Enforcement


Peter G. Blumberg
Assistant General Counsel


Roy Q. Lockett
Attorney